



## FACT SHEET SUPPLEMENT

### General Discharge Permit for Animal Feeding Operations; NPDES Permit No. MDG01; State Discharge Permit No. 19AF

#### GENERAL FEDERAL AND STATE INFORMATION

Section 301(a) of the Clean Water Act (CWA), 33 USC § 1311(a), prohibits the discharge of pollutants to waters of the United States in the absence of authorizing permits, including National Pollutant Discharge Elimination System (NPDES) permits. The Maryland Department of Environment (MDE) is the State agency with the authority to administer the federal NPDES Program in Maryland pursuant to Section 402 of the Clean Water Act, 33 USC § 1342. The United States Environmental Protection Agency (EPA) maintains concurrent enforcement authority with authorized states for violations of the CWA.

Code of Maryland Regulations (COMAR) 26.08.03.09B(1) incorporate by reference the federal Concentrated Animal Feeding Operations (CAFO) requirements. COMAR 26.08.04.09N(3) includes public participation requirements thus providing consistency with the federal requirements regarding Nutrient Management Plans (NMPs). Maryland's General Discharge (AFO) Permit requires a Required Plan defined in COMAR 26.08.04.09N(3)(b) as a Comprehensive Nutrient Management Plan (CNMP), Nutrient Management Plan (NMP), or Soil Conservation and Water Quality Plan ("conservation plan") (the "Required Plan") for CAFOs and MAFOs to comply with the federal requirements for a NMP.

Maryland AFO Permit requirements and procedures are consistent with the applicable federal requirements and procedures. The federal regulations at 40 CFR 122 and 412 provide the minimum requirements for compliance with Maryland's implementation of the federal CAFO Program.

The AFO Permit implements the discharge requirements for those CAFOs and MAFOs that are required to obtain a permit under federal regulations (and other facilities that require a permit under State regulations). For those animal feeding operations (AFOs) that do not otherwise require permits under federal or State regulations, COMAR 26.08.03.09 identifies applicable requirements.

Under the CWA, the Permitting Authority may issue general permits to regulate facilities which have similar discharges and are subject to the same conditions and limitations within a specified geographic area [40 CFR 122.28]. Using general permits conserves resources and reduces the paperwork burden associated with obtaining discharge authorization for both the regulated community and the Permitting Authority.

MDE has determined that a general permit is the appropriate mechanism to address the majority of CAFOs and MAFOs in Maryland that are subject to the requirements of the State NPDES Program and the CWA.

Supplementary information in this Fact Sheet is organized as follows:

- I. Modifications to existing AFO Permit
- II. AFO Permit Area and Coverage
- III. Effluent Limitations and Standards
- IV. Special Conditions
- V. Annual Report
- VI. Standard AFO Permit Conditions

## **I. MODIFICATIONS TO EXISTING AFO PERMIT**

### **A. General**

Throughout the AFO Permit, requirements not applicable to this round of the AFO Permit have been removed. In addition, based on the Department's experience with the existing AFO Permit, language was adjusted to be more consistent and clearer.

### **B. Primary Modifications**

1. Added Table of Contents [Page 1].
2. Added Table of Permit Reports and Submittals [Page 3].
3. Part I.A1: Changed "CAFO" to AFO" in last sentence [Page 3].
4. Part I.A2: Added qualifiers to be a medium CAFO to be consistent with EPA regulations [Page 4].
5. Part I.A6: Removed the word "size" [old Page 2].
6. Removed Certification of Conformance to be consistent with amended regulations under Code of Maryland Regulations (COMAR) 26.08.01 and.03. After the amendment of these regulations, animal feeding operations currently subject to the Certification of Conformance would not be required to submit the Certification of Conformance or comply with the conditions and requirements under the current General Discharge Permit for Animal Feeding Operations as a Maryland Animal Feeding Operation (MAFO). Currently only 2 animal feeding operations hold a Certification of Conformance: Phillip L. Meck/Meck Farm in Cecil County; 88,000 birds per flock, 2 houses; and Rockawalkin Ridge Road LLC in Wicomico County; 90,000 birds per flock, 4 houses. These farms are medium AFOs and do not have the potential to discharge to surface waters of the State as verified by inspection [old Page 2].
7. Part I.A6 and A7: Removed reference to permit fee [old Page 2].
8. Part I.A8: Added "as a CAFO" in the last line for clarification [Page 4].

9. Part I.A: Renumbered [Pages 4, 5, 6].
10. Part I.B1: Removed outdated reference to “MAFO facilities in existence prior to issuance of this permit” [old Page 3].
11. Part I.B2: Split OLD B2 into NEW B2 and NEW B3 to clarify differences in the zero-discharge requirement for existing and new sources [Page 6].
12. Part I.B3 [NEW B3]: Added new section clarifying that new source CAFOs are not permitted to discharge pollutants. Prior permits did not address new source CAFOs in this section of the permit. All new sources must be designed in accordance with the Poultry Structure Standard Plan developed by the Department’s Water and Science Administration. This includes stormwater management with BMPs such as grassy swales, forebays, and ponds that encourage infiltration of stormwater into the ground and provide assimilation of nutrients by the vegetation so that the effluent that may exit the pond under storm conditions mimics that of a forested buffer, with no additional pollutants being added as a result of the new source’s operation. This permit requires that no manure, litter, or process wastewater be placed in a position that it can be entrained by stormwater, therefore no pollutant discharge will occur. We have added that a discharge is permissible if the operator demonstrates that an upset has occurred according to Part V.F of the permit.
13. Part I.B4: Clarified that pollutants include manure, litter, or process wastewater and that MAFOs are not permitted to discharge regardless of the intensity of the storm event [Page 6].
14. Part I.B5: Clarified that pollutants include manure, litter, or process wastewater [Page 6].
15. Alphabetized definitions [Pages 6 – 10].
16. Part II.C: Clarified that “approved alternative” refers to setbacks and removed the reference to the NRCS standards, and instead referenced the Maryland Setback Standards and Approved Alternatives document that was developed by the Department and MDA and NRCS [Page 7].
17. Former Part II.D: Removed definition of “Certification of Conformance”. See 6, above [old Page 4].
18. Part II.E: In definition of CNMP, updated reference to NRCS handbook and clarifies that the CNMP satisfies the requirement for a Required Plan for both CAFOs and MAFOs. Also clarified that a CNMP includes an NMP and CP portion and an implementation schedule and other NRCS requirements [Page 7].

19. Part II.F: Added “existing CAFOs” and “new source CAFO” definitions to definition of CAFO including the definition of “new source” as listed in 40 CFR 122.29 [Page 7].
20. Part II.I: Added definition of “Discharge” [Page 8].
21. Part II.P: Added definition of “Land Application Area” [Page 8].
22. Part II.V: Added definition of “Organic Poultry” [Page 9].
23. Part II.Y: Added “that has come in contact with poultry” after “bedding” [Page 9].
24. Part II.Z: Added definition of “Poultry Pasture” [Page 9].
25. Part II.Z: Added “vegetative” prior to “growing season” [Page 9].
26. Part II.CC: Modified the plans that constitute a “Required Plan” (what is accepted during the application process) to be a CNMP for both CAFOs and MAFOs. Prior to this change both CAFOs and MAFOs were also allowed to submit an NMP/CP combination rather than the CNMP. Now only a CNMP with an update of the NMP portion will be accepted. This section also clarifies that the AFO may be required to update the Required Plan during the application process and that the Plan must remain current during the duration of permit coverage [Page 9].
27. Part II.FF: Clarified that for land CAFOs and land MAFOs, each field that receives manure must be addressed in the conservation plan in accordance with by NRCS methodology. This is how the program was being implemented in order to have the planner determine whether resource concerns existed on the land application areas [Page 10].
28. Part II.KK: Removed reference to a specific NRCS standard and changed to the appropriate NRCS Practice Standard [Page 10].
29. Part III: has been reorganized for clarity [Pages 10 – 14].
30. Part III.A1: Clarified that for CAFOs and MAFOs whether they are new construction or allowed their registration to expire or have new owners or operators must have General Permit coverage prior to continuing in operation. Also clarified that, in the case of poultry AFOs, “operating” means receiving birds [Page 10].
31. Part III.A2: Added requirement that CAFOs must submit NOIs electronically after December 21, 2023 unless a waiver is granted, in accordance with EPA’s ERule [Page 11].
32. Part III.A3: Added that a change in ownership or operator terminates the permit and the new owner or operator must reapply for the permit within 90 calendar days unless a transfer is requested. To be consistent with other NPDES permits [Pages 11].
33. Part III.A4: Information concerning acreage for land application, amounts of manure generated, and amounts transferred to other persons each year were moved under application requirements for *all* CAFOs, not just limited to dry manure chicken operations [Page 11].

34. Part III.A5a: The certification statement for the NOI required by the permit to be contained in the NOI was changed to the certification statement that is in the current NOI for consistency [Page 11].
35. Part III.A5c: Added a section on Consistency of Naming to require that the name of the registered entity is consistent in all documents [Page 12].
36. Part III.A5d: Added a section on required signatures to require that all required signatures be included in submitted documents for the documents to be considered complete [Page 12].
37. Part III.A6: Reworded submittal section to account for “any applicable fees” and corrected name of administration [Page 12].
38. Part III.B1: Required CAFOs and MAFOs to develop and update a Required Plan [Page 12].
39. Part III.B2: Moved Required Plan requirement to this section. Modified language to refer to “Required Plan” rather than CNMP or NMP [Pages 12 - 13].
40. Part III.B3: Added requirement to submit a revised implementation schedule within 14 calendar days of notification by the Department that the current one is inadequate [Page 13].
41. Part III.B3: Required the permittee to make changes to the CNMP and to notify the Department when the changes are made if the Department finds that it does not meet the minimum requirements. The permittee has 90 calendar days to make the changes once notified [Page 13].
42. Part III.B4: Required that the current CNMP be available for inspection by the Department and updated to reflect any changes to the AFOs operation and that the Department be notified of any changes in accordance with the General Permit [Page 13].
43. Part III.B5: Required that a Conservation Plan or the Conservation Plan portion of a CNMP include an analysis of resource concerns for each field receiving manure, litter, or process wastewater in accordance with NRCS methodology. If any resource concerns exist, they should be corrected through an implementation schedule by a date certain. The Department shall be notified of any changes within 30 calendar days of the change. To be consistent with EPA procedures [Page 13].
44. Part III.B5: MDE will develop a form on which a CNMP writer must identify the resources evaluated and identify all specific resource concerns at an AFO. This form must be provided to MDE by the CNMP writer or an AFO owner or operator along with the AFO’s CNMP [Page 13].
45. Part III.B5: When submitting a Notice of Intent (NOI) for coverage under the Permit for a proposed, renewed or modified Animal Feeding Operation (AFO), the Required Plan must identify the distance to and the name of the nearest waterbody(s), the 12-digit

watershed name and number, the water quality status of the watershed (s) by identifying if there are any TMDL impairments for nitrogen, phosphorus, bacteria or sediment and if the facility is located in a Tier 2 watershed(s) [Page 13].

46. Part III.B6: Required that any CAFOs and MAFOs not covered by the General Permit send in a CNMP within 90 calendar days of submission of the NOI [Page 13].
47. Part III.C2: Removed the distinction when a CAFO and MAFO are notified of their registration. Prior to this, the permit required CAFOs to pay a fee to receive their registration. Added that a CAFO or MAFO would be registered “after acceptance and final approval of the NOI, Required Plans, and payment of any applicable fees.” [Page 14].
48. Part III.C3: Modified last sentence to clarify that the public participation process ended after the “final administrative decision” [Page 14].
49. Part IV.A1: Deleted ability to submit either an NMP and CP combination rather than a CNMP as a Required Plan to satisfy application requirements. Added reference to MDA NMP regulations [Page 14].
50. Part IV.A1a: Deleted reference to NMP/CP combination for consistency [Page 14].
51. Part IV.A1ai: Removed reference to a particular NRCS Practice Standard and referred instead to the “Maryland Nutrient Management Guidelines” [Page 15].
52. Part IV.A1b: Deleted reference to NMP/CP combination for consistency. Also added a requirement to list resource concerns that the Department deems appropriate. Also removed reference to particular NRCS Practice Standards and substituted “the appropriate NRCS Practice Standard” throughout this section [Page 15].
53. Part IV.A1bi and v: Added an option to use best management practices deemed equivalent to those approved by NRCS to resolve resource concerns. Equivalent practices are those designed and certified by a professional engineer, subject to the Department’s approval [Page 15].
54. Part IV.A1c: Updated the reference to the NRCS National Planning Procedures Handbook [Page 15].
55. Part IV.A1d: For consistency, required that the CNMP meets the minimum standards and reference to the NMP/CP combination has been removed [Page 16].
56. Part IV.A1e: Added a requirement for an NMP or CNMP to note the location of tile drains and wells on each field in addition to sinkholes [Page 16].
57. Part IV.A1g: Added a requirement that the implementation schedule be signed by the operator. Added ability to modify the implementation schedule to reflect unavoidable delays at the Department’s discretion [Page 16].
58. Part IV.A3: Added a sentence reflecting that the emptying of a liquid storage facility during frozen field conditions is coordinated with MDA [Page 16].

59. Part IV.A5 and A6: Converted land application logbook and no-land logbook sections into two tables to be clearer. Clarified that Land permittees must implement the requirements in Table 3, and No-Land permittees must implement the requirements in Table 4. Moved requirement for liquid animal waste impoundments in former IVA3 and documentation and inspection of manure handling system to both tables and inspection and calibration of manure application equipment to the land table. Added that the names of fields in the record keeping must be consistent with the NMP and CNMP. Clarified that manure samples must be taken and analyzed annually and what the report must contain. No other changes in requirements were made [Pages 16 – 19].
60. Part IV.A6: Clarified that recordkeeping for the transport of manure, litter or process wastewater from the CAFO to other persons is required for a CAFO that transfers *all and/or some* of its manure, litter or process wastewater [Page 18].
61. Part IV.B1: Clarified that for dry manure handling, adequate storage capacity is for all manure removed from the animal confinement areas whereas for liquid manure handling, adequate capacity must include any runoff or direct precipitation from a 25 year storm in addition to the manure [Page 20].
62. Part IV.B2: Allowed the Department to have mortality management discretion not only in the case of catastrophic mortalities but also in the case of other applicable circumstances [Page 20].
63. Part IV.B6b: This section has been reorganized into a section on “Temporary Field Storage of Dry Poultry Litter” and clarifies that dry poultry litter can be temporarily stored in the field longer than 14 calendar days and 30 calendar days for a CAFO or MAFO, respectively if it is stacked in accordance with the appropriate NRCS Practice Standard or separated from the ground using a plastic liner [Page 20-21].
64. Part IV.B6bib1: Removed reference to a particular NRCS Practice Standard [Page 21].
65. Part IV.B6biii: Added a requirement to comply with MDAs nutrient management regulation on temporary field stockpiling where they do not conflict with the Department’s requirements [Page 21].
66. Part IV.B6biv: Added a prohibition of no land CAFOs and MAFOs from stockpiling poultry litter outside of the manure shed and poultry houses (on the production area) [Page 21].
67. Part IV.B9: Removed original text and OLD Part VB has been moved here to consolidate record keeping requirements in permit [Page 22].
68. Part IV.D2: Added a section on outdoor air quality for poultry operations. Required the appropriate NRCS Practice Standard if air quality is a resource concern [Page 23].
69. Part IV.D3: Added section on organic poultry requirements placing additional management requirements considering that birds are allowed outside and will deposit manure that will be exposed to precipitation [Pages 23].

70. Part IV.E1: Removed the word “impervious” since it is qualitative and did not add to the meaning. Also removed the qualifier that non-synthetic liners must be at least two feet thick [Page 23].
71. Part IV.E2: Clarified that for new sources, no discharge of animal waste or other pollutants should occur unless the operator demonstrates that an upset has occurred as defined in Part VF. Also clarified the new source requirements for liquid manure operations to be consistent with Part IVA and Part IVB. [Pages 23 - 24].
72. Part IV.E3: Added a section incorporating the “New Source Performance Design Criteria” that has been implemented since 2009 into the permit [Page 24].
73. Part IV.F1: Reworded reference to permit fees and added “along with any applicable fees”. Also clarified language [Pages 24].
74. Part IV.F1: Added a requirement to notify the Department when a permitted operation is sold and for the new owner to submit an NOI and Required Plan 30 days and 90 days of the sale, respectively [Page 24].
75. Part IV.F1di: Clarified that no land operations should not apply manure from any source, not only from the permitted AFO [Page 24].
76. Part IV.F3: Clarified that any changes required by the SCD should be implemented within 60 days after SCD requires them. Also added “required” to be consistent with other permit references [Page 25].
77. Part IV.F4: Added “required” to be consistent with other permit references [Page 25].
78. Part IV.F5: Clarified section [Page 25].
79. Part IV.F6: Added requirement to notify the Department in the case of an emergency or catastrophic loss that would affect the category of the AFO [Page 25].
80. Part IV.F7: Clarified that, after a modification, the Department will evaluate the updated NOI and Required Plan and either register the AFO under the general permit or require the AFO to apply for an individual permit [Page 25].
81. Part V.A1: Clarified the purpose of monitoring is to determine whether the operation of the AFO added pollutants, not whether pollutants are emanating from the farm [Pages 25 - 26].
82. OLD Part V.B: Moved paragraph on record keeping to Part IVB9 [Page 22].
83. Part V.B1: Deleted and merged with old paragraph VC2 to state that both CAFOs and MAFOs must submit the same annual report [Page 26].
84. Part V.B1: Added a requirement that CAFOs must submit Annual Implementation Reports electronically after December 21, 2023 in accordance with EPA’s ERule unless a waiver is granted [Page 26].
85. Part V.B1a: Clarified that the annual report should document that the number of animals on site has changed by 10% or more from the last calendar year [Page 26].

86. Part V.B1c: Added requirement that the identification of fields receiving manure should be consistent with that used in the Required Plan [Page 27].
87. Part V.B1i through k: Added requirement that the manure analysis, list of actual crops planted, actual yields, actual nitrogen and phosphorus content must be included in the annual report. This was added to be consistent with current practice [Page 27].
88. Part V.B1: MDE's Annual Implementation Report (AIR) form will be revised to include a question regarding the status of resource concerns on an AFO's Implementation Schedule [Page 26-27].
89. Part V.D: Modified permit language to reflect that it be sent to the address on the form and that it can be submitted electronically since the annual report is submitted to MDA [Page 27].
90. Part V.E1: Updated the noncompliance notification telephone number. Also clarified that discharges from the production areas of existing CAFO not resulting from greater than a 25-year storm event or any discharges from the production areas of a new source CAFO must be reported [Page 28].
91. Part V.E2: Updated the name of the administration [Page 28].
92. Part VII.M6a: Deleted SCD/MDA letter of recommendation requirement upon closure [Page 33].
93. Part VII.N: Deleted section allowing a permittee with an individual permit to request coverage under the General Permit. This was a vestige of pre-2009 CAFO permitting practice [old Page 26] [Page 33].
94. Part VII.O: Modified the submittal requirements for the renewal of existing permittees' coverage to comply with new section N (submit a NOI at least 60 days prior to the expiration of the current permit) and, if the CNMP on file at the Department is not current, the current CNMP shall also be submitted within 30 days. Modified language to include "any applicable fees" with the NOI [Page 33].
95. Part VII.P: Modified transfer of authorization section to require that the new operator/owner operate the AFO under the old CNMP temporarily and submit a new CNMP within 90 calendar days of the transfer [Pages 33 - 34].
96. Part VII.P3: Required that, for transfers, a new NOI be submitted within 90 calendar days of permit issuance, otherwise the Department may terminate and not administratively extend the coverage making the existing permittee apply as a new permittee. If terminated, the AFO may not operate until the new registration is issued [Page 34].
97. The GD Permit generally clarifies the usage of the terms "surface water" and "waters of the state".

## **II. PERMIT COVERAGE**

### **A. AFO Permit Coverage**

This AFO Permit provides coverage for any eligible operation that discharges or proposes to discharge animal waste, including manure, poultry litter, and process wastewater and meets the definition of a CAFO at 40 CFR 122.23 or the definition of a MAFO at COMAR 26.08.01.01B(42-1). CAFOs are point sources subject to the NPDES permitting program. A discharge permit is required for any CAFO that discharges animal waste, including manure, poultry litter, and process wastewater to surface waters of the United States [40 CFR Part 122.21(a) and 122.23(d)(1)]. Under Maryland law, a discharge permit is required for any CAFO that discharges or proposes to discharge animal waste, including manure, poultry litter, and process wastewater to surface or ground waters of the State [COMAR 26.08.03.09B(3)]. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge to surface waters of the State may occur. MAFOs are AFOs that are not CAFOs and meet the COMAR definition and are designed, constructed, operated, and maintained such that a discharge will not occur. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes [COMAR 26.08.03.09A(2)(b)].

### **B. Eligibility for Coverage**

The AFO Permit is required to fulfill the NPDES permitting requirements of 40 CFR 122.28(a) and the permitting requirements under COMAR 26.08.04.01. Eligible CAFOs and MAFOs may apply for authorization to discharge under the terms and conditions of this AFO Permit by submitting a Notice of Intent (NOI) to be covered by this AFO Permit. After December 21, 2023, the NOI must be submitted electronically unless the applicant applies for a waiver, which may be granted at the discretion of the Department.

### **C. Limitations on Coverage**

In accordance with 40 CFR 122.28(a)(4)(ii), the AFO Permit may exclude specified sources or areas from coverage. Large Category Duck CAFOs are excluded from coverage under this AFO Permit and are required to obtain coverage under an individual permit.

### **D. Application for Coverage**

Any large or medium AFO that is required to seek permit coverage must seek coverage as a CAFO when the AFO “proposes to discharge” [COMAR 26.08.03.09B(1)(c)] or if it actually discharges [40 CFR 122.23(f)]. MAFOs are required to seek permit coverage if they meet the COMAR definition of MAFO [COMAR 26.08.01.01B(42-1)]. Consistent with requirements under 40 CFR Parts 122.21(i)(1)(x) and 122.28(b)(2), and COMAR 26.08.03.09B(3) and C(1),

owners or operators of CAFOs and MAFOs, respectively, seeking coverage under this AFO Permit must submit a signed copy of the Department's AFO NOI Form and Required Plans to MDE. Upon receipt, MDE will review the NOI and Required Plans to ensure that all application and permit requirements are fulfilled. MDE may request additional information from the CAFO or MAFO owner or operator if additional information is necessary to complete the NOI or Required Plan. After December 21, 2023, the NOI must be submitted electronically unless a waiver is granted by the Department in accordance with EPA's electronic reporting rule [40 CFR 127.16] This ERule requirement is listed in the AFO Permit under Part III.A.2.

If MDE determines that the NOI is complete, MDE will prepare a preliminary approval. The NOI, and Required Plan, which address the nine minimum standards for water quality protection, will be made available at the MDE's office and on the MDE website for a 30 calendar day public review and comment period, and information regarding the NOI will be posted on MDE's website at

<https://mde.maryland.gov/programs/LAND/RecyclingandOperationsprogram/Pages/AFOInfo.aspx>.

MDE will respond to comments received during this period and, if necessary, require the CAFO or MAFO owner or operator to revise the Required Plan. The public may request a hearing during the first 20 calendar days of a CAFO comment period [COMAR 26.08.04.09N(k)(i)]. The Department will provide the public with 30 calendar days' notice prior to the date of the hearing. A public hearing for a MAFO may be scheduled at the Department's discretion [COMAR 26.08.04.09N(k)(ii)].

At the end of this process, if no adverse public comments are received or if the final approval is not substantially different from the preliminary approval, the preliminary approval becomes the final approval and the applicant will be granted coverage under this AFO Permit only upon written notification by MDE. If comments are received, the Department will prepare responses to the comments and provide public notice on the Department's website. Persons adversely affected are offered an opportunity to request a contested case hearing on the content of the Required Plan(s) for 15 calendar days. If no request is made, the applicant will be registered under the AFO Permit once the final administrative decision is rendered. Upon final approval, the terms and conditions of the Required Plan are enforceable as terms and conditions of the AFO Permit [COMAR 26.08.04.09N(3)(l)(iv)].

#### **E. Requiring an Individual Permit**

In accordance with 40 CFR Part 122.28(b)(3)(i) and COMAR 26.08.04.09N(1)(a), MDE may determine that providing coverage under this AFO Permit is not adequate for a particular CAFO and may require the facility to obtain an individual NPDES Permit.

#### **F. Continuation of this Permit**

In accordance with 40 CFR Part 122.46(a) and COMAR 26.08.04.08E, this AFO Permit has a term

of five years from the effective date. If this AFO Permit is not reissued or replaced prior to the expiration date and the applicant has submitted a timely and complete reapplication, it will be administratively extended in accordance with 40 CFR 122.6 and COMAR 26.08.04.06A(3) and the terms and conditions of the existing permit will continue and will remain in full force and effect.

### **III. RATIONALE FOR EFFLUENT LIMITATIONS AND STANDARDS**

#### **A. Production Areas**

Under the terms and conditions of this AFO Permit, large and medium CAFOs must meet the requirements of the effluent guidelines found at 40 CFR 122.42(e)(1)(i), 412.31 and 412.43. Limitations for medium CAFOs are based on 40 CFR 412 for large CAFOs. MAFOs are required to meet the requirements in COMAR 26.08.03.09C(5) and the general and MAFO-specific requirements in the AFO Permit. This AFO Permit requires that the production area of the CAFO or MAFO be operated in a manner consistent with the requirements of 40 CFR 412.37(a) and (b). Areas within the production area not specifically included in the definition of production area, i.e. the areas between the poultry houses, are subject to best professional judgment limitations.

Outdoor storage piles of manure at any location at a CAFO or MAFO fall within the federal and State definition of a production area and are therefore subject to the AFO Permit requirements of no discharge consistent with 40 CFR Part 412 for CAFOs and in the AFO Permit for MAFOs. Additional requirements apply to manure piles stored more than 14 calendar days in the field for CAFOs and more than 30 calendar days in the field for MAFOs.

#### **B. Land Application Areas**

The AFO Permit requirements to develop and implement an NMP for land application areas are based upon requirements found at 40 CFR 412.4(c), 40 CFR 122.42(e), and 412.37(c) and COMAR 15.20.07 and .08. Large CAFOs that spray irrigate are subject to both federal NPDES and State groundwater regulatory requirements. Any AFO that spray irrigates is regulated under this AFO Permit [COMAR 26.08.03.09E].

Prohibitions regarding field application of animal waste in certain weather conditions are specified under Part IV.A.3 and 4 of the AFO Permit. Other Required Plan requirements for land application of animal waste are included in Part IV.B.8 of the AFO Permit, including following protocols required in the Maryland Department of Agriculture (MDA) regulation in COMAR 15.20.07 and 15.20.08. While some, but not all, of the requirements applicable to land application of animal waste were repeated in Part IV.C as a means of emphasis, the purpose of Part IV.C is to establish additional operational parameters for liquid discharges to groundwater via automated spray irrigation systems as defined in Definition EE of the AFO Permit. The exception process for animal waste in Part IV.A.3, which includes process wastewater, remains applicable to the process wastewater referenced in Part IV.C.2. of this AFO Permit.

## IV. SPECIAL CONDITIONS

### A. Required Plan

1. Schedule: AFOs seeking coverage under this AFO Permit must submit the completed Required Plan to MDE along with the NOI, along with any applicable fees. Currently registered AFOs must submit a completed NOI and any applicable fee. MDE will determine whether the Required Plan on file is current. If so, it is not necessary for the permittee to submit a copy of the Required Plan. If modification of the Required Plan is needed to reflect the current operation, MDE will notify the permittee and the updated Plan will be due within 90 calendar days of the request. The permittee shall implement its Required Plan and modify it as necessary upon authorization under this AFO Permit in accordance with 40 CFR 122.23(h) and COMAR 26.08.03.09B(1).
2. Required Plan Review and Terms: Each permittee must develop, submit with its NOI, and implement a site-specific Required Plan. The Required Plan must comply with the requirements in COMAR 26.08.04.09N(3)(b) and federal regulations in 40 CFR 122.42(e). The Required Plan must specifically identify and describe the practices that will be implemented to assure compliance with the effluent limitations and special conditions in this AFO Permit. The Required Plan must also be consistent with all requirements of MDA regulations at COMAR 15.20.07 and 15.20.08 *and* federal effluent guidelines at 40 CFR 412.31. In addition, condition Part IV.B of the AFO Permit requires the permittee's Required Plan to comply with the nine minimum standards which are listed in 40 CFR 122.42(e)(1) and enumerated in the AFO Permit. The AFO Permit requires that the Required Plan be developed based upon Natural Resources Conservation Service (NRCS) National Planning Procedures Handbook (NPPH), Part 600.60 A(1), Component Planning Technical Guidance, Subpart G, Amendment 6, November 2014, which requires the following:

“Meet all applicable local, Tribal, State, and Federal regulations. When applicable, ensure that USEPA-NPDES or State permit requirements (i.e., minimum standards and special conditions) are addressed.”

3. Any effluent guideline requirements not currently addressed in NRCS standards have been included in this AFO Permit. For example, conservation practice 634 for manure transfer does not currently require that an AFO provide the recipient with a nutrient analysis. Instead, that federal requirement is specifically listed as one of this AFO Permit requirements at Part IV.A(6) and is also one of the nine minimum standards for record keeping (IV.B(9)). Upon receipt of the Required Plan, MDE will review the Required Plan. MDE can request additional information if needed. MDE will use the Required Plan to identify site-specific permit terms and conditions. The enforceable terms and conditions of the Required Plan are incorporated by reference into the AFO Permit. [40 CFR 122.23(h)]. MDE will identify the enforceable

terms and conditions of the CNMP and make that determination subject to public comment consistent with federal rules and COMAR 26.08.04.09N(3)(i) and (3)(l).

Once the NOI and Required Plan are complete and have been reviewed by MDE, MDE will notify the public of MDE's preliminary approval to grant coverage under this AFO Permit. MDE will publish the NOI submitted by the CAFO or MAFO, including the CAFO's or MAFO's Required Plan, on the MDE website ([www.mde.maryland.gov](http://www.mde.maryland.gov)). The notice will also provide the opportunity to request a public hearing on the NOI and the Required Plan for CAFOs in accordance with 40 CFR 124.11 and 12. The public is provided 30 calendar days to comment and request a public hearing on MDE's preliminary approval of the NOI and Required Plan for CAFOs. MAFOs do not have the opportunity for a public hearing, but only the public comment period. MDE will respond to comments and can require revision of the Required Plan, if necessary. [40 CFR 122.23(h)]. A public hearing will be scheduled after 30 calendar day notice if requested within the first 20 calendar days of the public comment period. The preliminary approval becomes a final approval once all comments have been addressed. If modification to the Required Plans is necessary based on the comments, a notice of final approval will be published on the website listing those modifications. When comments are received, the public is provided 15 calendar days from publication of the final notice for persons adversely affected to request a contested case hearing on the content of the Required Plan(s). [COMAR 26.08.04.09N(l)(ii)]

MDE will notify the applicant that coverage as a CAFO or MAFO under this AFO Permit has been authorized and of the applicable terms and conditions of this AFO Permit. When MDE authorizes coverage under this AFO Permit, the terms and conditions of the Required Plan are incorporated by reference into the terms and conditions of this AFO Permit for the CAFO. [40 CFR 122.23(h)]

4. Required Plan Content: The proposed renewal of the AFO Permit specifies that each Required Plan must, at a minimum, include practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, each Required Plan must meet measures required under 40 CFR 122.42(e)(1)(i-ix) and specified in the AFO Permit. These requirements include the following:
  - a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. [40 CFR 122.42(e)(1)(i)].
  - b. Ensure that clean water is diverted, as appropriate, from the production area. [40 CFR 122.42(e)(1)(iii)].
  - c. Ensure that chemicals and other contaminants handled on-site are not disposed in any manure, litter, process wastewater, or storm water storage or treatment system unless that system is specifically designed to treat such chemicals or contaminants.

[40 CFR 122.23(1)(v)].

- d. Identify appropriate site-specific conservation practices to be implemented, including, as appropriate, buffers, or equivalent practices to control runoff of pollutants to waters of the State and specifically, to minimize the runoff of nitrogen and phosphorus. [40 CFR 122.23(1)(vi)].
  - e. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil. [40 CFR 122.23(1)(vii)].
  - f. Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater. [40 CFR 122.23(1)(viii)].
  - g. MDE may accept application rates expressed in Required Plans consistent with the Linear Approach or the Narrative Rate Approach provided in 40 CFR 122.42(e)(5). Both approaches have been incorporated by reference in COMAR 26.08.03.09B(1) to provide Maryland the authority to allow for either approach in the development of a Required Plan. Current NMP practices in Maryland rely upon the Linear Approach. To the extent that those practices begin to rely on a Narrative Rate Approach they will be required to be consistent with 40 CFR 122.42(e)(5)(ii).
    - i. CAFOs and MAFOs that use the Linear Approach must calculate, at least once each year, the maximum amount of manure, litter, and process wastewater to be land applied using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; [40 CFR 122.42(e)(5)(i)].
    - ii. The “Narrative Rate Approach” expresses the field-specific rate of application as a narrative rate prescribing how to calculate the amount of manure, litter, and process wastewater allowed to be applied. CAFOs and MAFOs that use the Narrative Rate Approach must calculate, at least once each year, the maximum amounts of manure, litter, and process wastewater to be land applied using the methodology required in 40 CFR 122.42(e)(5)(ii) before land applying manure, litter, and process wastewater.
  - h. Identify and maintain all records necessary to document the development and implementation of the Required Plan and compliance with this AFO Permit. [40 CFR 122.42(e)(5)(ix)].
5. Signature: The Required Plan must be signed by the applicant (owner/operator) or other signatory authority in accordance with the Signatory Requirements of this AFO Permit. [40 CFR 122.41(k)] and the Plan writer.

6. Required Plan Retention: A current copy of the Required Plan must be kept on-site at the permitted facility in accordance with Part IV.B.9 of the AFO Permit and provided to the permitting authority upon request. [40 CFR 412.37(c)].
7. Changes to the Required Plan:
  - a. This AFO Permit allows for a CAFO or MAFO owner/operator or operator to make changes to its Required Plan. When a CAFO or MAFO owner/operator or operator covered by this AFO Permit makes changes to their Required Plan previously approved by MDE, the CAFO or MAFO owner/operator or operator must provide MDE with the most current version of the CAFO's or MAFO's Required Plan and identify changes from the previous approved version. [40 CFR 122.42(e)(6)(i)].
  - b. The CNMP writer must identify on a form provided by MDE the resources evaluated and identify all specific resource concerns at an AFO. This form must be completed by the CNMP writer and provided to MDE by the CNMP writer or an AFO owner or operator along with the AFO's CNMP. When submitting a Notice of Intent (NOI) for coverage under the Permit for a proposed, renewed, or modified Animal Feeding Operation (AFO), the Required Plan must identify the distance to and the name of the nearest waterbody(s), the 12-digit watershed name and number, the water quality status of the watershed(s) by identifying if there are any TMDL impairments for nitrogen, phosphorus, bacteria or sediment and if the facility is located in a Tier 2 watershed(s).
  - c. MDE will review the revised Required Plan. If MDE determines that the changes to the Required Plan require revision of the terms or conditions of the Required Plan incorporated into the permit issued to the CAFO or MAFO, MDE will then determine whether such changes are significant/substantial. [COMAR 26.08.04.09N(3)/40 CFR 122.42(e)(6)(ii)] Substantial changes to the terms of a Required Plan incorporated as terms and conditions of a permit include, but are not limited to:
    - i. Addition of new land application areas not previously included in the CAFO's or MAFO's Required Plan, except that if the added land application area is covered by the terms of a Required Plan incorporated into an existing NPDES permit and the permittee complies with such terms when applying manure, litter, and process wastewater to the added land [40 CFR 122.42(e)(6)(iii)(A)];
    - ii. For Required Plans using the Linear Approach, changes to the field-specific maximum annual rates of land application (pounds of N and P from manure, litter, and process wastewater). For Required Plans using the Narrative Rate Approach, changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop [40 CFR 122.42(e)(6)(iii)(B)];

- iii. Addition of any crop or other uses not included in the terms of the CAFO's or MAFO's Required Plan [40 CFR 122.42(e)(6)(iii)(C)]; and
  - iv. Changes to site specific components of the CAFO's or MAFO's Required Plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S. [40 CFR 122.42(e)(6)(iii)(D)]
- d. If the changes to the terms or conditions of the Required Plan are not significant/substantial, MDE will include the revised Required Plan in the CAFO's record and notify the permittee and the public of any changes to the terms or conditions of this AFO Permit based on revisions to the Required Plan. [40 CFR 122.42(e)(6)(ii)(A)]
- e. This AFO Permit requires that significant/substantial changes be subject to the public participation requirements of permit Section III.C.3 (see also COMAR 26.08.04.09N(3)) of this AFO Permit. If MDE determines that the changes to the terms or conditions of the Required Plan are significant/substantial, MDE will notify the public, make the proposed changes, and make the information submitted by the CAFO or MAFO owner/operator or operator available for public review and comment. MDE will also respond to all comments received during the comment period. MDE may require the permittee to further revise the Required Plan, if necessary. Once MDE incorporates the revised terms and conditions of the Required Plan into this AFO Permit, MDE will notify the permittee of the revised terms and conditions of this AFO Permit. [40 CFR 122.42(e)(6)(ii)(B)]
8. Certified Specialists to Develop Required Plans: Although a certified specialist may be used, CAFO and MAFO owners/operators or operators are solely responsible for assuring their Required Plans comply with all the terms and conditions of this AFO Permit and are properly implemented.

**B. Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons**

Under the AFO Permit, where CAFO/MAFO-generated manure, litter, or process wastewater is sold or given away, the permittee must comply with specific requirements that document the transfer and promote proper management. [40 CFR 122.42(e)(3)].

**V. ANNUAL REPORTING**

Under this AFO Permit, the permittee must submit an annual report to MDE. By March 1 of every year, each CAFO and MAFO must submit to the Department an annual report on a form provided by MDE. MDE has developed an electronic annual report. This is being offered as an option until it becomes mandatory when the EPA ERule becomes effective in December 2023. The ERule requirement for annual reporting is listed in the AFO Permit part V.B. The

requirements and criteria for the annual report are specified in this AFO Permit and in 40 CFR 122.42(e)(4). MDE's Annual Implementation Report (AIR) form will be revised to include a question regarding the status of resource concerns on an AFO's Implementation Schedule.

Annual reporting requirements include applicable federal and State requirements.

## **VI. STANDARD CONDITIONS**

The AFO Permit incorporates the standard conditions applicable to permits issued under Maryland's NPDES Program. These conditions consist of general conditions, operation and maintenance requirements, monitoring and records, reporting requirements, signatory requirements, certification, availability of reports, and penalties for violations of permit conditions (consistent with both federal and State penalty requirements).